12

COMMITTEE ON PETITIONS

(FOURTEENTH LOK SABHA)

TWELFTH REPORT

MINISTRY OF RAILWAYS
MINISTRY OF COAL
MINISTRY OF FINANCE

LOK SABHA SECRETARIAT
NEW DELHI

May, 2006/*Jyaistha*, 1928 *(Saka)*

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(Presented to Lok Sabha on 22 May, 2006)

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CB-I.No. 335 Vol.XII

Price : 38.00

Published under Rule 382 of the Rules of Procedure and Conduct of Business in Lok Sabha (Eleventh Edition) and printed by the Manager, Government of India Press, Minto Road, New Delhi.

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4. Shri V.P. Gupta — *Committee Officer*

TWELFTH REPORT OF THE COMMITTEE ON PETITIONS
(FOURTEENTH LOK SABHA)

INTRODUCTION

I, the Chairman, Committee on Petitions, having been authorised by the Committee to present the Report on their behalf, present this Twelfth Report of the Committee to the House on the following matters:—

(i) Representation requesting for regularization of Canteen Manager and other employees working in Railway Staff Canteen in Varanasi.

(ii) Representation for implementation of SAIL terms and conditions of service to the employees working in Washery Division (CCWO) and other Units of BCCL.

(iii) Action Taken by the Government on the recommendations made by the Committee on Petitions (13th Lok Sabha) in their 17th Report on the Petition requesting for protection of the interests of small investors/depositors.

2. The Committee considered and adopted the draft Twelfth Report at their sitting held on 19th May, 2006.

3. The observations/recommendations of the Committee on the above matters have been included in the Report.

4. For facility of reference observations/recommendations of the Committee have been printed in thick type in the body of the Report.

PRABHUNATH SINGH

Chairman,
Committee on Petitions.

NEW DELHI;
19*th May*, 2006
29 *Vaisakha*, 1928 (*Saka*)

CHAPTER I

REPRESENTATION REQUESTING FOR REGULARIZATION OF CANTEEN MANAGER AND OTHER EMPLOYEES WORKING IN RAILWAY STAFF CANTEEN IN VARANASI

1.1 Dr. Rajesh Kumar Mishra, M.P. forwarded a representation signed by Shri Arvind Kumar Singh, Manager, C&W Railway Staff Canteen, Varanasi (U.P.) and others, regarding a request for regularisation of Canteen Manager and other employees working in Railway Staff Canteen, Varanasi.

1.2 In their representation, the petitioners submitted the following points:—

(i) As per Railway Establishment Rule, 2229 there is a provision of canteen for providing catering facility to the railway employees at a place where more than 250 employees are working. Under this rule a canteen was opened on 8.9.1997 in Varanasi and Shri Arvind Kumar Singh was appointed to the post of Canteen Manager. This canteen is running on regular basis under the Managership of Shri Arvind Kumar Singh since then.

(ii) The employees working in this canteen have not been regularised by the Railways even after repeated assurances given by the Railways on the pretext that before establishing a new canteen, the concerned plan should have been submitted to the Railway Board for seeking its approval indicating the financial implications as such in this regard duly signed by the Financial Advisor as well as Chief Accountant, which is yet to be done by the Department. The Railways also assured the employees that they are likely to be regularised after getting approval from the Railway Board;

(iii) Prior to this, all employees working in four canteens of Lucknow Division, Northern Railway have been regularised; and

(iv) The Hon'ble High Court have already stated in its orders dated 26.2.2001, that all the employees should be regularised. Despite this, the Department has not taken any action in this regard so far.

1.3 The petitioners requested that keeping in view the pitiable condition and future prospects of the canteen employees working in this canteen since 8th September, 1997, they may be regularised.

1.4 The representation was forwarded to the Ministry of Railways (Railway Board) on 22 October, 2004 for furnishing their comments on the points raised therein.

1.5 In response, the Ministry of Railways (Railway Board) *vide* their communication dated 15 February, 2005 furnished the following comments:—

> "The employees of statutory canteens and non-statutory recognized (subsidized) canteens have already been made Railway servants w.e.f. 22nd October, 1980 and 1st April, 1990 respectively, by virtue of Hon'ble Supreme Court's judgement dated 27th February, 1990 in the case of M.M.R. Khan *Vs*. UOI. Petitions of certain non-statutory non-recognised (un-subsidized) canteens regarding regularization were, however, dismissed by the Hon'ble Court. Varanasi canteen is one such non-recognised canteen, which has not been approved by the Ministry of Railways. Since, the workers employed in the Varanasi canteen have not been appointed by the Railway Administration, they cannot be absorbed in Railways. There are many such non-recognized non-statutory canteens functioning over the Railways which have not been departmentalized nor their employees have been absorbed as the principles laid down by the Hon'ble Supreme Court in their judgement referred to above are not applicable in these cases including the canteen at C&W, Varanasi. However, as regards the representation said to have been referred by Shri Arvind Kumar Singh to the General Manager, Northern Railway regarding absorption of employees of the Varanasi canteen, the position will be advised to the Lok Sabha Secretariat as early as possible."

1.6 The Committee also took oral evidence of the representatives of the Ministry of Railways (Railway Board) on 31 March, 2005 in order to have their considered views on the subject.

1.7 During the course of evidence the Chairman (Railway Board) apprised the Committee as under:—

> "The Railway canteen of Varanasi falls in the category of non-statutory and non-recognised canteens. There are three types of canteen in Indian Railways i.e. (i) statutory canteens under the provisions of the Factories Act; (ii) non-statutory canteens which are recognised by us and (iii) non statutory and non-recognised canteens. Canteen under the first category are subsidized by us. As per the judgement of Supreme Court given on dated 27th February, 1990, the statutoty canteens of Railways and workers of 11 non-statutory recognized canteens will be treated as regular workers w.e.f. 22nd October, 1980. Alongwith this, workers of other non-statutory canteens will be treated as regular employees w.e.f. 1st April, 1990. The judgement of the Supreme Court does not cover the non-statutory and non-recognised canteens in the category to be treated as regular employees. Under this direction action has been taken with regard to the canteen in Varanasi."

1.8 When the Committee wanted to know whether the Supreme Court orders have been implemented by the Railways in letter and spirit, the Ministry in their written reply stated as under:—

> "Hon'ble Supreme Court *vide* their Judgement dated 27th February, 1990 in the case of MMR Khan *Vs.* Union of India, decided that the workers engaged in the Statutory Canteens and 11 Delhi based Non-Statutory Recognized (Subsidized) canteens are railway servants w.e.f. 22nd October, 1980.

> The Hon'ble Court also decided that employees of other Non-Statutory Recognized Canteens would be treated as railway employees *w.e.f.* 1st April, 1990. These employees would be entitled to all benefits as such railway employees with effect from the said dates according to the service conditions prescribed for them under the relevant rules/orders.
>
> Simultaneously, the Hon'ble Supreme Court ruled that 'as far as the employees in non-statutory non-recognized canteens are concerned their petitions are dismissed'.
>
> The Judgement has been implemented by the Railways and the employees of the Statutory and Non-Statutory Recognized (Subsidized) canteens have been treated as railway servant from said dates."

1.9 The Committee desired to know the details of Hon'ble High Court's orders in this context and asked if the Court had ordered for regularisation of these employees, why the orders of the Court had not been obeyed. The Ministry in their written reply furnished as under:—

> "High Court have ordered that the Petitioner should approach the concerned authority of Railway Establishment. In case any representation is preferred by the petitioner for the purpose, the same shall be traversed upon and disposed of by the concerned authority while referring to the notification dated 24th August, 1990. Pending decision of the representation, the petitioner will not be disturbed or diminished from his present status. The representation of Shri Arvind Kumar Singh was received on 24th April, 2001 and was sent to Lucknow Division for necessary action, which has already been disposed of. As per Hon'ble Court's order, Shri Arvind Kumar Singh has not been disturbed or diminished from his status."

1.10 The Committee wanted to know if the employees working in all the four canteens of Lucknow Division, Northern Railways have been regularised why employees of C&W staff canteen at Varanasi have not been regularised on the same analogy. The Chairman (Railway Board) informed the Committee during evidence as under:—

> "There were four such canteens in Lucknow where we have regularised the workers. However, we investigated this aspect also. Those canteens do not come in the same category as that of canteen of Varanasi. There are four canteens in Lucknow Circle, Diesel shed canteen of Mugal Sarai, Locoshed canteen of Varansai, Locoshed Canteen of Faizabad and Locoshed canteen of Lucknow. We have seen the documents of all these four canteens, which are approved by the Board, and these canteens come in the second category *i.e.* of the category of non statutory recognised canteen. The decision of Supreme Court came on 27 February, 1990 and we have regularised their workers accordingly. In this perspective, in view of the verdict of the court and the guidelines of the Railway Ministry, the question to regularise the workers of Varanasi canteen does not arise."

1.11 When Committee wanted to know as to why the nearly 10 years old canteen of Varanasi has not been regularised so far by the Railways, the Chairman (Railway Board) submitted:—

> "All the historical canteens under the Railways send proposal to the Railway according to the set guidelines of Railways which are further scrutinized by the Ministry. After the approval of the Ministry they are treated as regular. As far as the canteen of Varanasi is concerned the process is still incomplete and therefore it is still a non-statutory and non-recognised."

Recommendations/Observations

1.12 The Committee note that the Railway Establishment Manual, permits providing catering facility to the railway employees at a place where more than 250 employees are working at a place. Under this manual a canteen was opened on 8th September, 1997 in Varanasi and Shri Arvind Kumar Singh, the petitioner in the case under examination, was appointed to the post of canteen manager. This canteen is running on regular basis under the managership of Shri Arvind Kumar Singh since then.

1.13 The Committee further note that the employees working in this canteen have not been regularized so far. A case was filed by the petitioner (Canteen manager) in Hon'ble High Court of Allahabad for regularisation of canteen manager and other employees. The Hon'ble High Court in its orders dated 26th February, 2001 had directed the petitioners to approach the concerned Railway authorities for redressal of their grievance. In pursuance of the judgement of the Hon'ble High Court, the petitioners gave their representation on 16th April, 2001. The representation was examined by the Ministry of Railways and it was disposed of rejecting the demand of the petitioners on the pleas that this canteen falls under non-statutory, non-recognized (un-subsidized) canteen.

1.14 Explaining the reasons for not accepting the pleas of the petitioner, the Ministry of Railways stated that there are three types of canteen in Indian Railways *i.e.* (i) Statutory canteens under the provisions of the Factories Act, 1948 (ii) non-statutory recognized (subsidized) canteens and (iii) non-statutory non-recognized canteens. As per Hon'ble Supreme Court judgement dated 27th February, 1990, workers engaged in the first two categories of canteens are being treated as railway employees and are entitled to get all benefits according to the service conditions prescribed for them under the relevant rules/orders, whereas in the third case, *i.e.* the one that the petitioner represents the status and facilities are not bestowed and they are not established with the approval of the Railway Board.

1.15 The Committee's examination has revealed that the non-statutory/non-recognized canteens have been considered to be an important service provider in the Railway Administration. Their existence has been duly acknowledged in Railway Establishment Manual. The number of such service providers is not meagre to be dismissed with. In fact, they are stated to be large in number catering to the requirements of the public. And, yet, it is surprising that the Railways

have not formulated any clear-cut policy on this important segment attached to the country's largest public sector organisation. The Committee feel pained to point out to the unsympathetic attitude of the authorities to this unfortunate section, as is evident from the manner in which the orders of the Hon'ble High Court of Allahabad dated 26th February, 2001 was dealt with by the Railways, in the present case. Though the petition was submitted by the petitioner in pursuance of the Court's order to the Railway authorities for redressal, the same was rejected. The Committee were not apprised of the compelling reasons for the rejection. The only argument of the Railways was that their case for regularisation was not favourably considered by the Hon'ble Supreme Court. The Committee are not at all convinced with the argument particularly in view of the fact that the decision given by the Hon'ble High Court of Allahabad was in the year 2001, *i.e*. after more than a decade since the Hon'ble Supreme Court gave their decision in the year 1990. The Committee, therefore, recommend that the Ministry of Railways should examine the whole issue in depth, keeping in view not only the judgements of the Courts in letter and spirit, but also, the genuine grievances of the employees. Such canteens could be considered for suitable upgradation to the other categories or reasonable ways and means should be found out to resolve the whole issue with humanitarian considerations. The Committee may be apprised of the action taken in this regard within three months of the presentation of the report.

CHAPTER II

REPRESENTATION FOR PROPER IMPLEMENTATION OF TERMS & CONDITIONS OF SERVICE OF ERSTWHILE EMPLOYEES OF CENTRAL COAL WASHERIES ORGANISATION (CCWO), AND OTHER UNITS OF STEEL AUTHORITY OF INDIA LTD. (SAIL) MERGED WITH COAL INDIA LTD./BHARAT COKING COAL LTD. (BCCL)

2.1 Shri D. Kundu and others, Employees of Central Coal Washeries Organisation (CCWO) (Washery Division) under Bharat Cooking Coal Limited (BCCL), Dhanbad (Jharkhand) submitted a representation, countersigned by Shri Ajit Kumar Singh, MP regarding proper implementation of terms and conditions of service of Steel Authority of India Limited (SAIL) to the employees working in Washery Division and other units of BCCL.

2.2 In the said representation, the petitioners stated that they were the employees of erstwhile, CCWO of SAIL which was allowed to be merged with Coal India Limited (CIL)/BCCL by the Ministry of Steel, Government of India *w.e.f.* 1.10.1983. The Union of CCWO *i.e.* Janta Mazdoor Sangh moved an application on before the High Court of Patna, Ranchi Bench, Ranchi, to determine their service conditions and accordingly the Court passed direction that the employees of erstwhile CCWO/SAIL would exercise their option within six weeks as to whether they want to remain with the service conditions of SAIL or to accept the service conditions of BCCL and such options shall be treated as final. The petitioners further stated that the other union *i.e.* Coal Washeries Workers Union entered into a tripartite agreement on 29th October, 1983 before the Regional Labour Commissioner (C), Dhanbad. According to the terms of settlement, the employees opted terms and conditions of SAIL within the stipulated period but in utter violation of the said options, the management of BCCL/CIL had denied the facilities as applicable to employees of SAIL. They also added that BCCL/CIL issued a press-release inviting fresh options to accept the terms and conditions of BCCL and those who will not accept their conditions will be forcibly sent back to the SAIL.

2.3 The petitioners, therefore, stated that the act of the management was unjustified, unconstitutional and arbitrary and against the norms of natural justice and prayed to save them, and their family members against the victimization of BCCL/CIL management.

2.4 The Committee took up the matter for examination in accordance with Direction 95 of the Directions by the Speaker, Lok Sabha. Accordingly, the aforesaid representation was forwarded to the Ministry of Coal on 13th September, 2005 to furnish their comments on the points raised therein by the petitioners. However, the Ministry of Coal did not furnish their comments on the said representation.

Subsequently, the Ministry of Coal furnished their replies on the questionnaire based on the aforesaid representation *vide* their O.M. No. 540/5/2005-PRIW dated 27th September, 2005.

2.5 In their written reply the Committee were informed by the Ministry of Coal that the merger of CCWO of SAIL with BCCL was an administrative decision by the Government of India and was made effective from 1st October, 1983. The employees of erstwhile CCWO were governed by the terms & conditions as applicable to the employees of SAIL. The total number of employees working in erstwhile CCWO was 3057 and most of them had opted for SAIL terms. As on 1st April, 2005, there were 846 employees on roll.

2.6 When asked about the salient features of the tripartite agreement entered into by Coal Washeries Worker's Union on 29th October, 1983 after the transfer of ownership of the coal washeries of CCWO from SAIL to BCCL before the Regional Labour Commissioner (C), Dhanbad, the Committee were informed by the Ministry of Coal that the following were the Terms of Settlement:—

(i) The employees of CCWO shall be deemed to be the employees of BCCL with effect from the date of such transfer, *viz.*, 1st October, 1983.

(ii) The services rendered by the employees of CCWO under SAIL shall be deemed to have been rendered under BCCL for such purposes for computation of gratuity, leaves, etc., for which necessary financial arrangements will be arrived at between SAIL and BCCL.

(iii) As regards wage structure, other facilities and fringe benefits including service conditions, the employees of CCWO will be given option either to continue under SAIL terms or accept BCCL terms and the option will be exercised by the employees in writing within a period of 30 days and such option once exercised shall be final and not revocable till he continues in the service.

(iv) Such employees as opted for BCCL terms shall be placed in appropriate BCCL scale of pay as per National Coal Wage Agreement and shall be eligible for all facilities and benefits, including service conditions, as may be admissible to the employees serving under BCCL from time to time.

(v) Such employees as opted for SAIL terms shall continue to be governed under the SAIL terms and conditions, facilities and fringe benefits, including service conditions, as were in vogue and applicable to them immediately preceding the date of transfer of the ownership of the coal washeries under CCWO from sail to BCCL and or those which may be introduced in future for the employees of steel plants and/its subsidiaries in SAIL.

(vi) Such employees shall continue to be governed by the said terms till they remain in service of the BCCL.

(vii) All new entrants to the service of the coal washeries whose ownership has since been transferred from SAIL to BCCL will be taken into employment

under BCCL facilities and fringe benefits and conditions of service throughout their service career in BCCL irrespective of their place of posting in the washeries.

(viii) Such employees of the coal washeries under CCWO as have opted for SAIL terms, on being posted to any other washing plant under BCCL on transfer, shall be allowed to continue with his SAIL terms, scale of pay, etc. as personal to them and they will discharge the duties and responsibilities as may be assigned by the management of the washery to which they are transferred or promoted.

(ix) If any of them earns promotion in the new washery under BCCL, he will continue to be governed by the SAIL scale of pay and terms.

(x) The promotion of employees belonging to the clerical cadre of CCWO, coal washeries shall continue to be regulated by their existing cadre scheme under SAIL including seniority, etc.

(xi) This will be confined to vacancies arising in the clerical cadre in the four coal washeries at Dugda I and II, Bhojudih and Patherdih and at their Central Office at Saraidehlla.

(xii) No dispute or demand will arise from these clerical staff for promotion or upgradation purely on the ground that any of their co-workers serving in the office of BCCL at Dhanbad or any other unit of BCCL having earned promotion/upgradation on the basis of their regulations.

(xiii) The existing separate contributory P.F. under central coal washeries organisation/SAIL shall continue to be maintained separately as an exempted P.F. for the purpose of employees P.F. Act.

(xiv) Agreement and settlements reached both at bipartite and tripartite levels in the past between the management and of central coal washeries organisation under SAIL and the coal washeries workers union shall continue to be honoured and implemented by BCCL as contemplated under section 18 of the Industrial Disputes Act, 1947.

(xv) Matters of general and collective nature affecting the workers of CCWO, washeries shall continue to be discussed and negotiated with the recognized union as hitherto by the management.

(xvi) As regards payment of annual bonus under section 31-A of the payment of Bonus Act, 66 employees of CCWO washeries shall continue to derive the benefit of their production/productivity linked bonus formula as hitherto. It is agreed that no change in this scheme will be introduced except by mutual agreement between the management and the union.

2.7 The Committee were also informed that the terms of settlement were binding to the parties under Industrial Disputes Act, 1947. On being asked as to what were the difficulties in extending the facilities to the petitioners as applicable to SAIL, the

Ministry of Coal informed that the facilities under SAIL terms were being provided to the concerned employees except for certain variations as follows:—

"(a) Employment to male dependant or monetary compensation@ Rs. 1500/- per month to female dependant of an employees dying in harness even other than accidents is being provided in line with BCCL terms although such provisions do not exist in SAIL terms. The monetary compensation is paid till the female dependant attains the age of 60 years or a minor male dependant attains the age of 18 years. In other words, for employees dying a normal death while in service, the social security provided to these employees are significantly superior to those available under the SAIL terms that otherwise govern their terms of employment. This is being extended pursuant to an agreement reached between management and union on 14.12.1993.

(b) VRS to the willing workers has been introduced long before the same was introduced in SAIL as per BPE norms.

(c) Steel Dinner Set—it is provided on completion of 25 years of service in SAIL and also on superannuation. Instead of this, a wrist watch with BCCL logo has been agreed to be provided as a token of appreciation of the service on superannuation.

(d) High Tea—there is provision of high tea on retirement of employees in SAIL. To avoid any discrimination amongst the existing employees of Bharat Coking Coal Limited this has not been introduced.

(e) Festival advance—this has not been agreed to avoid discrimination amongst the two sets of employees."

2.8 On being enquired about the reasons for the union of CCWO to file a petition No. CWJC/16/84 (R) before the High Court of Patna, Ranchi Bench, Ranchi, the Committee were informed as under:—

> "While one trade union, affiliated to INTUC, participated in the tripartite settlement with the management before the Regional Labour Commissioner (c) in which it was decided to continue in SAIL terms for the employees , the other union namely Janata Mazdoor Sangh, moved the High Court challenging the action of the Management for transferring the washeries from SAIL to BCCL which according to the union had the effect of altering the service conditions of the employees .....
>
> The court observed that the matter has been practically concluded and the controversies settled. It would be appropriate to offer one time irrevocable option to each of the employees for accepting either the SAIL terms or BCCL/ NCWA terms. The petitioners were directed to exercise their option within six weeks from the date of passing the order by obtaining the prescibed form from BCCL."

2.9 The Ministry of Coal informed the Committee that the petitioners (workers union) in their writ petition CWJC No. 2075/1998 filed before the High Court of Patna claimed the following:—

(a) Promotion from non-executive to E-O- grade in Executive Cadre.

(b) Promotion from non-executive to non-executive specially from Office Supdt. to Section Officer without vacancy under cluster scheme.

(c) Raising rate of deduction of PF from 10% to 12%.

(d) Change of the name of PF Trust from Hindustan Steel Limited Coal Washery Provident Fund to SAIL PF.

The High Court of Patna *vide* order date 18th January, 2000 directed the respondent *i.e*. BCCL to implement, if not already implemented, the rules for promotion of non-executive cadre and CIL shall dispose of the representation of the petitioners, filed with the former, as expeditiously as possible but not later than three months from the date of filing of such representation by the latter.

The Committee were further informed that the directions of the Court were duly implemented by BCCL *vide* order dated 15th May, 2000 from Chairman, CIL.

2.10 In the meantime on 10th April, 2005, a press communique appeared in the newspaper wherein it was stated that fresh options would be invited from the employees of CCWO to accept the terms and conditions of Bharat Coking Coal Limited and those who would not accept these, would be sent back to the SAIL. This was, however, denied by the Ministry of Coal.

2.11 The Committee took oral evidence of the representations of the Ministry of Coal at their sitting held on 13th December, 2005. During the course of oral evidence the Secretary, Ministry of Coal informed the Committee as under:—

> "It was their condition that the service conditions of the employees of Washeries Division of former SAIL, who were transferred to BCCL, will have the same service conditions which were in SAIL at the time of their transfer. Thereafter, one of the two Unions, accepted the same but the other union went before the Court. The Court ordered that one time option may be obtained from all the employees as to whether they want conditions of SAIL or BCCL. Finally, it was decided that conditions of SAIL will be applicable in BCCL. As far as possible, BCCL has generally applied the terms and conditions of SAIL but BCCL has always remained a sick company. There was not enough money because of its incurring loss, that the company could not give all the benefits to its employees. That is why, all the facilities which should be available, could not be given to the employees of BCCL and from SAIL. But after receipt of petition, before the Committee, employees of BCCL and SAIL have settled the issue after discussion. This year, BCCL has come to a position of profit first time in its history and its financial position has improved. The company is now in a position to provide facility for which the company has agreed."

2.12 On being enquired by the Committee as to whether the matter has been settled, the Secretary informed in affirmative that the matter has been settled. The Chairman of BCCL also added that, meetings were held in this regard with the trade unions in the months of June and September, 2005. On this, the Committee observed that the petitioner as well as the CMD of the company will be called to ascertain the factual position and both the parties had agreed then no further action need to be taken in this matter.

2.13 Subsequently, the petitioners informed the Committee in writing that the matter concerning various demands of employees of BCCL were discussed between Unions and BCCL Management and all the demands have been amicably settled with the management. Thus, they have no further grievance in the matter.

Observations/Recommendations

2.14 The Committee observe that under an administrative decision of the Government of India, the Central Coal Washeries Organisation (CCWO) of Steel Authority of India Ltd. (SAIL) was merged with Bharat Coking Coal Limited (BCCL) one of the subsidiaries of Coal India Ltd. (CIL) with effect from Ist October, 1983. It was stipulated that the employees of erstwhile CCWO would be governed by the Terms & Conditions as applicable to the employees of SAIL. After the transfer of ownership of CCWO from SAIL to BCCL in October, 1983, a Tripartite Agreement was signed before the Regional Labour Commissioner, Dhanbad by the management of BCCL and the employees of CCWO. The Term of Settlement *Inter-alia* stated that the employees of CCWO shall be deemed to be the employees of BCCL and the services rendered by them under SAIL shall be deemed to have been rendered under BCCL for computation of gratuity, leaves, etc. for which necessary financial arrangements would be arrived at between SAIL and BCCL. It was clearly indicated that the terms of settlement would be honoured and implemented by BCCL as contemplated under Section 18 of the Industrial Disputes Act, 1947. In the meantime, one of the Unions of CCWO moved an application before the High Court of Patna to determine the service conditions. The Hon'ble Court directed that the employees of CCWO must exercise their option within six weeks on a prescribed format from the office of the BCCL to the effect as to whether they want to remain with the service condition of SAIL or to accept the service condition of BCCL and such option shall be treated as final and irrevocable. The Committee note that this stipulation was already there in the Terms of Settlement signed before the Regional Labour Commissioner, Dhanbad on 29th October, 1983, and all the employees had opted for SAIL terms. The Committee are surprised to note that inspite of Tripartite Agreement, which according to BCCL was binding under Industrial Disputes Act, 1947, they ignored and violated the Terms of Settlement illegally and extended the facilities under SAIL terms to the employees belonging to erstwhile CCWO with certain variations. The Committee are of the view that had the BCCL implemented the Terms & Conditions of Agreement in toto, the employees would not have moved the Court and ultimately had not approached this Committee for redressal of their grievances. The Committee regret that the BCCL failed to honour the

provisions of the Tripartite Agreement and the Court's Orders in the matter. They acted in an arbitrary manner and thus, putting the employees to hardships for more than 20 years.

2.15 The Committee are, however, satisfied to note that the issue of implementation of SAIL Terms & Conditions has been settled amicably between the management of BCCL and the employees of erstwhile CCWO (Washery Division) with the intervention of the Committee. The Committee hope that the necessary action in this regard would be taken by the BCCL expeditiously so that the employees get their benefits immediately.

CHAPTER III

ACTION TAKEN BY THE GOVERNMENT ON THE RECOMMENDATIONS MADE BY THE COMMITTEE ON PETITIONS (THIRTEENTH LOK SABHA) IN THEIR SEVENTEENTH REPORT ON THE PETITIONS REQUESTING FOR PROTECTION OF THE INTERESTS OF SMALL INVESTORS/DEPOSITORS

3.1 The Committee on Petitions (Thirteenth Lok Sabha) in their Seventeenth Report presented* to Lok Sabha, on 20th November, 2002 on the petition requesting for protection of the interests of the small investors/depositors.

3.2 The Committee had made certain observations/recommendations in the matter and the Ministry of Finance (Department of Economic Affairs) were requested to implement those recommendations and furnish their action taken notes for the consideration of the Committee.

3.3 Action taken notes have been received from the Ministry of Finance (Department of Economic Affairs) in respect of all the recommendations contained in the Report. The recommendations made by the Committee and the replies thereto furnished by the Ministry are detailed in the succeeding paragraphs.

3.4 In para 1.33 of the Report, the Committee had observed as follows:—

> "The Committee express their deep concern over the fact that the Indian Capital Market has been plagued by a plethora of financial irregularities and scams involving huge amounts of public money. Earlier in 1992-93 a Parliamentary Joint Committee to enquire into irregularities in Securities and Banking Transactions appointed in August, 1992 also examined in detail the ill effect of such scams. Unfortunately, many unscrupulous Companies/ Schemes/Financial Institutions continue to shatter the faith of the investors by dishonouring their commitments made to the innocent investors."

3.5 In their action taken reply, the Ministry of Finance (Department of Economic Affairs) have stated as follows:—

> "Section 55A was inserted through the Companies (Amendment) Act with effect from 13.12.2000. According to this Section, the provisions contained in Section 55 to 58, 59 to 81, 108, 109, 110, 112, 113, 116, 117, 118, 119, 120, 121, 122, 206, 206A and 207, so far as they relate to issue and transfer of securities and non-payment of dividend shall—
>
> (a) in case of listed public companies;
>
> (b) in case of those public companies which intend to get their securities listed on any recognized stock exchange in India.

*Presented to Speaker on 26th August, 2002

be administered by the SEBI. Section 55A has strengthened the regulatory powers of SEBI for safeguarding the interest of the investing public.

The Department of Company Affairs has established a Fund under Section 205C of the Companies Act, 1956, called Investor Education and Protection Fund. The basic objectives of the Fund are creating awareness among investors about the various investment options, educating the investors about the risks involved in any investment programme and their rights under various laws of the country and also sponsoring research towards investors protection.

Keeping in view, *inter-alia* the recent securities scam, the failure of non-banking financial institutions, the Department of Company Affairs has taken the initiative to set up a Serious Fraud Investigation Office (SFIO) in July, 2003 for investigation corporate frauds. SFIO has started functioning since 1st October, 2003. It has already started investigation of some cases of alleged fraud.

Vanishing Companies Cell is looking into issues relating to vanishing companies under guidance from Coordination and Monitoring Committee chaired by SEBI Chairman and DCA Secretary."

3.6 In para 1.34, of the Report , the Committee had recommended as follows:—

"The petitioners who are the representatives of the investors grievances Forum, Mumbai have contended that more than Rs. 50,000/- crore of savings of retired pensioners, women and salaried-class people have been locked-up in the various securities scams in the capital market. The petitioners have also stated that the Indian Capital & Financial Market has grown many fold during the last decade but its law and administration has not been able to keep pace with it. Further, there has been no action for the recoveries of the dues of the small investors whose moneyes have got blocked in the various securities scams. While expressing their apprehension that justice delayed may prove to be justice denied, the petitioners have requested to protect the interests of the small investors within a time-bound action plan."

3.7 The Ministry of Finance (Department of Economic Affairs) in their reply, have stated as follows:—

"The administration of capital market and protection of interests of stakeholders in such market is being looked into by the specific statutory regulator *viz*. SEBI under SEBI Act. SEBI takes care of interests of stake holders under specific provisions of SEBI Act, various rules, regulations and guidelines. SEBI has also been taking many steps to take care of interests of investors.

The SEBI Act, 1992 as amended in 2002 authorizes SEBI to impose penalty in event of failure to redress investor grievances by listed company or intermediary, impound and retain the proceeds or securities in respect of any transactions which is under investigation, direct any intermediary or person associated with the securities market in a manner not to dispose or eliminate an asset forming part of any transaction which is under investigation.

SEBI has now been empowered to levy a penalty for failure to redress investors grievances if any listed company or any person who is registered as an intermediary after having called upon by the SEBI in writing, to redress the grievances of investor, fails to redress such grievances within the time period specified by Board, such company or intermediary shall be liable to a penalty of Rs. 1 lakh for each day during which such failure continues or Rs. 1 crore, whichever is less.

DCA through its investor protection cell and ROCs takes up complaints with other regulatory bodies like SEBI, RBI etc. and directly with the companies as well. The status of complaints if put on the web site of the DCA. Further the companies Act, 1956 has been amended recently three times for bringing many provisions relating to good corporate governance and better protection of investor interests.

Further, keeping in view, *inter-alia*, the recent securities scam, the failure of non-banking financial institutions, this department has taken the initiative to set up a Serious Fraud Investigation Office (SFIO) in July, 2003 for investigating corporate frauds. SFIO has started functioning since 1st October, 2003. It has already started investigation of some cases of alleged fraud."

3.8 In para 1.35 of the report, the Committee had recommended as follows:—

"In order to rectify the misgivings of the capital market, the petitioners have briefly suggested that:—

(a) Investors may be fully informed in all aspects of the market at the time of floating initial Public Offerings;

(b) The disclosures made by companies should be inline with international practices;

(c) time limit should be imposed for final disposal of complaints received by stock exchanges;

(d) Company law Board (CLB) should dispose off petitions in a time-bound manner and consider the breach of CLB order as contempt of Court.

(e) End-use of funds collected by companies should be traced by a regulatory body; and

(f) All schemes should be brought under purview of regulation. Police Authorities should be entrusted with time-bound task to trace 'Vanishing Companies', their promoters and to take charge of their assets."

In view of above, the Committee desire that the measures taken/suggestions given by the petitioners to safeguard the investments of small investors may be examined by the Government/Regulatory Bodies and implemented with a positive perspective in mind.

3.9 The Ministry of Finance (Department of Economic Affairs) in their reply, have informed as follows:—

"(a) & (b): SEBI has framed specific provisions, rules and guidelines etc. for ensuring that IPOs are made in the most transparent and open manner. SEBI

have also made SEBI (Disclosure and Investor Protection) Guidelines which ensure that completed disclosures are made at the time of IPOs so that investors can take an informed decision. These guidelines are constantly updated to keep up with the changing market requirement. Many programmes for making investors better aware while investing are being conducted by both DCA and SEBI.

Notwithstanding the above, it must be understood that investment in equity has a measure of risk attached to it. The investors need to read and understand the disclosure in the offer document before making an investment decision.

SEBI has mandated that the attention of the investor must be invited to the risk associated with such investments.

(c) The provisions of the Companies Act, 1956 provide for adeaquate disclosures at the time of Public Issues (Schedule II) and for taking action against companies/officers/directors/experts for making fraudulent and false statements in the prospectus. Further the Government also keeps on amending Companies Act, 1956 to ensure that investors' interests are protected and that those who commit fraud and take advantage of the system are prosecuted harshly.

It was observed that arbitration proceedings take an unduly long period of time to reach the stage of making award. Besides, it was also noticed that the time period provided for in the bye-laws of the stock exchanges was too long which has led to the arbitration cases being pending for a long time and consequently, the undue delay in the resolution of these cases and affecting adversely the interest of investors. To resolve the investor disputes through arbitration mechanism in a time-bound member, SEBI has advised the stock exchanges to amend their bye-laws to provide for the following:

Adjournment

Adjournment, if any, shall be granted by the arbitral tribunal only in exceptional cases, for bonafide reasons to be recorded in writing.

Time for completion of Arbitration

The arbitral tribunal shall make the arbitral award normally within 3 months from the date of entering upon the reference.

Request for extension

The time taken to make the award may not be extended beyond 3 times, by the Managing Director or Relevant Authority on an application by either of the parties or the arbitral tribunal, as the case may be.

Notwithstanding the extensions granted in the above manner, the arbitral tribunal shall make the arbitral award within a period of six months from the date of entering into reference *i.e.* extension of time of award can be for a maximum period of three months.

Date of entering reference

For the purposes of these bye-laws, the arbitral tribunal shall be deemed to be entered upon a reference on the date on which the arbitral tribunal has held the hearing;"

Besides, SEBI has also specified the norms for compensation by the company to the aggrieved party *i.e.* investor in cases where there is a delay on the part of the company in either transferring the shares or communicating the objection to the transfer of shares within the stipulated time period of one month. In order to give effect to these decisions, the listing agreement has been amended to provide for the following:

Clause 12A (1a) of listing agreement:

"(1a) The company agrees that in respect of transfer of shares where the company has not effected transfer of shares within 1 month or where the company has failed to Communicate to the transferee any valid objection to the transfer within the stipulated time period of 1 month, the company shall compensate the aggrieved party for the opportunity losses caused during the period of the delay.

In addition, the company keeping in view the provisions of Section 206 A of the Companies Act and Section 27 of the Securities Contracts (Regulation) Act, 1956 provide all benefits (*i.e.* bonus shares, right shares, dividend) which accrued to the investor during the intervening period on account of such delay."

The stock exchanges have also been advised to amend their bye-laws to provide for the mechanism of arbitration for determining the amount of compensation in case of delay in transfer of securities and delay in furnishing of the objection memo beyond the specified time. As mentioned above, the arbitration process has to be completed in a time-bound manner.

(d) The Company Law Board (CLB) is quasi-judicial body. The Board is not subject to the control of the Central Government and has the powers to regulate its own procedures and act in its own discretion.

The Companies (Amendment) Act, 2002 provides for constitution of a National Company Law Tribunal (NCLT). The jurisdiction and powers presently conferred on CLB will be vested in the NCLT. The time limit for every action to be taken for reviving and rehabilitating of a sick company by the NCLT has been prescribed beyond which NCLT has to record reasons in writing for extension of time. The Amendment Act also provides for constitution of a National Company Law Appellate Tribunal (NCLAT) for hearing appeals against the orders of the NCLT. The NCLAT shall have the same jurisdiction, powers and authority in respect of contempt of itself as the High Court has.

(e) The Companies (Auditor's Report) Order, 2003 issued by DCA *vide* Notification No. GSR 480 (E) dated 12th June, 2003, provides that the

auditor's report on the accounts of a company to which the Order applies shall include a statement, *inter-alia,* on:—

(i) whether the management has disclosed on the end use of money raised by public issue and the same has been verified; and

(ii) In case the company has accepted deposits from the public, whether the directives issued by the Reserve Bank of India and the provisions of Section 58A and 58AA of the Act and the rules framed thereunder where applicable, have been complied with. If not, the nature of contraventions should be stated; if an order has been passed by Company Law Board whether the same has been complied with or not.

(f) FIRs have been filed against 87 companies out of 122 vanishing companies. FIRs have not been filed against the remaining vanishing companies mainly for reasons such as these companies are in liquidation or filing statutory returns. The matter has been taken up with the State Governments seeking their help for getting the FIRs registered and making further progress in the investigations, etc.

Safeguards have been provided in the Companies Act for the small depositors/investors under Section 58AA and 58AAA. Further the Department notified Companies (Disqualification of Directors under Section 274(1)(g) of the Companies Act, 1956) Rules, 2003 by virtue of which if a company fails to repay deposits, or interest thereon, or redeem its debenture or continues default to pay any dividend for one year, the directors of that company stand disqualified.

The Companies (Amendment) Bill, 2003 has been introduced in the Rajya Sabha on 7.5.2003 largely for strengthening investor protection. A specific amendment has been proposed in Section 68 of the Companies Act to deal with 'disgorgement of illegally derived benefits'. It is proposed that a person who makes a false or misleading statement, on an order made by National Company Law Tribunal, be liable to a penalty which shall not be less than twice the amount raised from the public and this penalty may be recovered from such persons and the liability for this purpose shall be unlimited. It is also proposed that National Company Law Tribunal shall refund the money to the persons who invested in the company out of the amount of penalty so recovered from the Promoters/Directors. It is also proposed to amend Sections 13 and 30 of the Companies Act to provide that the Memorandum and Articles of Association of every company formed after the enactment of the Bill shall contain two copies of recent photographs of all subscribers to the Memorandum and the witnesses along with proof of the identity of the subscribers."

3.10 In para 1.36 of the Report, the Committee had recommended as follows:—

"The Committee are informed that a High Level Committee on Capital Markets has been set up to periodically review and coordinate the policies

and regulatory issues concerning the capital market. The high Level Committee has taken certain important and effective decisions to plug the loopholes in the regulatory mechanism of capital market. The Committee are however, amazed to learn that the terms of reference of this High Level Committee is not specific towards the protection of investors. The Committee are unhappy to note that the High Level Committee has not gone a long way to curtail the deliberate misuse of public funds by various companies which collect money through public issues in the capital market. The Committee hardly need to emphasize that companies collect money through public issues in the capital market, as it is the easiest and cheapest source of finance. Hence, the Committee recommends that Government should ensure that the deliberate and criminal misuse of public money by various companies is not allowed to take place."

3.11 In their action taken reply, the Ministry of Finance (Department of Economic Affairs) have stated as follows:—

"The HLCC was constituted by the MoF to resolve any important regulatory and policy issues requiring consideration at a high level. As per the present terms of reference the HLCC, the Committee is expected to consider only divergence in policy issues among different regulatory authorities. The Government takes all steps to ensure that deliberate and criminal misuse of public money by companies does not take place. DCA and SEBI have taken action against vanishing companies.

As regards misuse of public money by various companies, the Companies (Auditor's Report) Order, 2003 issued by DCA *vide* Notification No. GSR 480(E) dated 12th June, 2003 provides that the auditor's report on the accounts of a company to which the Order applies shall include a statement, *inter alia*, on :—

"whether the management has disclosed on the end use of money raised by public issue and the same has been verified."

3.12 In para 1.37 of the report, the Committee had recommended as follows:—

"While stringent eligibility norms have been prescribed by SEBI for companies which access the capital market, the Committee are distressed to learn that a large number of 'Vanishing Companies' and 'Z' Category Companies have come to the fore in the stock exchanges. The Committee, therefore, cannot but conclude that there is an apparent need to modify the rules and regulations so as to discourage illegal siphoning of funds by companies through issues raised in capital market. The Committee recommend that concerted efforts should be made by SEBI and Department of Company Affairs in coordination with the stock exchanges for timely detection of fraudulent, misleading and manipulative practices of companies, if necessary, with the help of police authorities and by laying down clear-cut criteria for abiding by the Objective and Principles and International Organisation for Securities Commission (IOSCO)."

3.13 The Ministry of Finance (Department of Economic Affairs) in their reply, have stated as follows:—

> "Utilization of funds is outside the purview of SEBI—though Capital Market operations, under the provisions of SEBI Act and Section 55A of the Companies Act, 1956, are the responsibility of SEBI. However, as regards misuse of public funds by various companies which collect money through public issues in the capital market, the Companies (Auditor's Report) Order, 2003 issued by DCA *vide* Notification No. GSR 480 (E) dated 12th June, 2003 provides that the auditor's report on the accounts of a company to which the Order applies shall include a statement, *inter alia*, on:—
>
> > 'whether the management has disclosed on the end use of money raised by public issue and the same has been verified'."

3.14 In para 1.38 of the Report, the Committee had recommended as follows:—

> "The Committee note that around 174 companies have been listed under the 'Z' category by the Mumbai Stock Exchange, however, they have not been put in the category of 'Vanishing Companies.' Although these 'Z' category of companies are virtually those companies which do not comply with the listing requirements of the stock exchange, such companies are allowed the normal trading facilities. At the time of buying and selling of scrips, it is notified on a screen that the company is in 'Z' category and does not resolve the complaints from the small investors. In this regard, the Committee are not fully convinced that investors are restrained from investing in the 'Z' category of companies. During the course of the oral evidence of the representatives of the Ministry of Finance & other Regulatory Bodies, it has been assured to the Committee that for consideration of enlarging the definition of a 'Vanishing Company' the matter would be placed before the Co-ordination and Monitoring Committee (CMC) set up with representatives of SEBI and Department of Company Affairs. The Committee, therefore recommend that suitable steps should be taken to enlarge the definition of the 'Vanishing Companies' and put the 'Z' category companies in the list of 'Vanishing' Companies in due course."

3.15 The Ministry of Finance (Department of Economic Affairs) in their action taken reply, have stated as follows:—

> "Z" category companies cannot be treated as vanishing companies as non-trading of scrips does not necessarily mean non-existence of the company. As on date the CMC has specified following criteria for identifying a Company as Vanishing Company:
>
> (a) Companies which have not complied with listing requirements of ROC respectively for a period of 2 years
>
> (b) Companies which have not complied with filing requirements of ROC respectively for a period of 2 years
>
> (c) No correspondence has been received by the exchange from the company for a long time.

(d) No office of the company is located at the mentioned registered office address at the time of Stock Exchange inspection.

For a company to be identified as a vanishing company, all the above criteria needs to be fulfilled. As such, even if a company defaults only on one aspect, *viz.* non compliance of listing agreement, it cannot be identified as a vanishing company unless, it defaults on the remaining three aspects."

3.16 In para 1.39 of the Report, the Committee had noted as follows:—

"That the Co-ordination and Monitoring Committee had set up seven Task Forces to regulate operational activities in the Capital market and identify the 'Vanishing companies'. As a result of their physical verification, 176 companies had been identified as 'Vanishing Companies' as on 15.12.2001. The amount mobilized by these companies from public through public issues was to the tune of Rs. 958.90 crores. Prohibitory Orders had been issued by SEBI against 88 such companies and 339 promoters/directors from accessing the capital market for a period of 5 years. Out of these 88 companies only 15 companies were under liquidation. The Committee are deeply perturbed to note that more than Rs. 958.90 crores have been blocked in these 'Vanishing Companies.' The Committee would like to know the steps taken by the Department of Company Affairs and SEBI for the recovery of the invested monies of the investors from these companies."

3.17 The Ministry of Finance (Department of Economic Affairs) in their action taken reply, have informed as follows:—

"Of the 229 companies earlier identified as vanished, CMC, in its meetings, held on 25.02.2003 and 15.01.2004, deleted the names of 44 and 63 companies respectively from the list of vanishing companies, as these companies were found to be regular in filing statutory returns, etc. resulting the number of vanishing companies being reduced to 122.

The field offices of DCA have taken action against such companies for violation of the provisions of the Companies Act, 1956 and tried to enlist assistance of police authorities and general public to ascertain the whereabouts of such companies. Prosecutions have been filed for "technical defaults" such as non-filing of Balance Sheet/Annual Returns against 99 of 122 vanishing companies. Prosecutions have also been launched against 107 such vanishing companies for non-compoundable offences, carrying the punishment of imprisonment, under Sections 62/63, 68 and 628 of the Companies Act. Model FIR has also been finalized in consultation with SEBI during the month of May, 2003 for filing complaints with the police authorities against the vanishing companies and their Promoters/Directors for the offences punishable under Sections 420, 406, 403, 415, 418 & 424 of the Indian Penal Code. FIRs have been filed against 87 of the 122 vanishing companies till date.

SEBI has also taken action for debarring vanishing companies and their directors for raising money from the capital market, details in respect of which may be obtained from SEBI.

The Companies (Amendment) Bill, 2003 has been introduced in the Rajya Sabha on 7.5.2003 largely for strengthening investor protection. A specific amendment has been proposed in Section 68 of the Companies Act to deal with 'disgorgement of illegally derived benefits'. It is proposed that a person who makes a false or misleading statement, on an order made by National Company Law Tribunal, be liable to a penalty which shall not be less than twice the amount raised from the public and this penalty may be recovered from such persons and the liability for this purpose shall be unlimited. It is also proposed that National Company Law Tribunal shall refund the money to the persons who invested in the company out of the amount of penalty so recovered from the Promoters/Directors. It is also proposed to amend Section 13 and 30 of the Companies Act to provide that the Memorandum and Articles of Association of every company formed after the enactment of the Bill shall contain two copies of recent photographs of all subscribers to the Memorandum and the witnesses along with proof of the identity of the subscribers."

3.18 In para 1.40 of the Report, the Committee had recommended as follows:—

"As per the Companies Act, an investor can get back money invested in equity shares of a company only when the company is wound up. The Committee, therefore, recommend that the concerned Regulatory Body should initiate winding-up proceeding against these fraudulent companies within a specific time frame so as to save the investments of the investors, if necessary, by amending the laid down legal provisions in this regard."

3.19 The Ministry of Finance (Department of Economic Affairs) in their action taken reply, have informed as follows:—

"The Companies (Amendment) Act, 2002 provides for constitution of a National Company Law Tribunal (NCLT). The jurisdiction and powers presently conferred on CLB will be vested in the NCLT. The time limit for every action to be taken for reviving and rehabilitating of a sick company by the NCLT has been prescribed beyond which NCLT has to record reasons in writing for extension of time. The Amendment Act also provides for constitution of a National Company Law Appellate Tribunal (NCLAT) for hearing appeals against the orders of the NCLT. The NCLAT shall have the same jurisdiction, powers and authority in respect of contempt of itself as the High Court has. The issue for initiating action for winding-up proceedings against the fraudulent companies, for the purpose of returning back investors money quickly, may be considered after reviewing action already initiated against vanishing companies."

3.20 In para 1.41 of their Report, the Committee had stated as follows:—

> "The Committee are informed that the Co-ordination and Monitoring Committee have examined the legal provisions to freeze the assets of the promoters/directors of defaulting companies and disqualification of persons in a default in the capital market. Also, the Department of Company Affairs have agreed to examine the establishment of suitable mechanism to monitor the utilization of funds by companies. The Committee desire the Government to take effective measures to freeze the assets of the defaultees and defaulting companies and verify the end-use of the funds collected by various companies through public issues."

3.21 The Ministry of Finance (Department of Economic Affairs) in their action taken reply, have stated as follows:—

> "The Companies (Amendment) Bill, 2003 introduced in the Rajya Sabha on 7.5.2003 proposes a specific amendment in Section 68 of the Companies Act to deal with 'disgorgement of illegally derived benefits.' It is proposed that a person who makes a false or misleading statment on an order made by National Company Law Tribunal, be liable to a penalty which shall not be less than twice the amount raised from the public and this penalty may be recovered from such persons and the liability for this purpose shall be unlimited. It is also proposed that National Company Law Tribunal shall refund the money to the persons who invested in the company out of the amount of penalty so recovered from the Promoters/Directors. It is also proposed to amend Section 13 and 30 of the Companies Act to provide that the Memorandum and Articles of Association of every company formed after the enactment of the Bill shall contain two copies of recent photographs of all subscribers to the Memorandum and the witnesses along with proof of the identity of the subscribers.
>
> The Companies (Auditor's Report) Order, 2003 issued by DCA *vide* Notification No. GSR 480 (E) dated 12th June, 2003, provides that the auditor's report on the accounts of a company to which the Order applies shall include a statement, *inter alia*, on:—
>
> "Whether the management has disclosed on the end use of money raised by public issue and the same has been verified."
>
> It may be noted that the clause 43 of the listing agreement require companies to "furnish on quarterly basis a statement to the exchange showing the variation between projected utilisation of funds and/or projected profitability statement made by them in their prospectus or letter of offer and the actual utilisation of funds and/or actual profitability".
>
> SEBI *vide* circular SMDRP/Policy/Cir-46/2000 dated October 05, 2000 had stipulated that the funds raised through preferential offers and their actual utilisation as per the object/s of the preferential offer shall also be made part of the same provision of disclosure.

Further, Clause 43 of the Listing Agreement was amended to provide the following:—

"43 (1) The Company agrees that it will furnish on a quarterly basis a statement to the exchange indicating the variations between projected utilisation of funds and/or projected profitability statement made by it in its prospectus or letter of offer or object/s stated in the explanatory statement to the notice for the general meeting for considering preferential issue of securities, and the actual utilisation of funds and/or actual profitability.

(2) The statement referred to in clause (1) shall be given for each of the years for which projection are provided in the prospectus/letter of offer/ object/s stated in the explanatory statement to the notice for considering preferential issue of securities and shall be published in newspaper simultaneously with the unaudited/audited financial results as required under clause 41.

(3) If there are material variations between the projections and the actual utilisation/profitability, the company shall furnish an explanation therefore in the advertisement and shall also provide the same in the Directors's Report."

These policy measures help in verifying and making the listed companies accountable for the utilisation of funds collected by them through public issues."

3.22 In para 1.42 of the Report, the Committee had recommended as follows:—

"In regard to activities of the brokers and sub-brokers, the Committee note that the brokers are required to abide by the Code of Conduct under SEBI (Stock Brokers and sub-Brokers) Regulations, 1992. SEBI have got the powers to call upon a stock broker to take such measures as are necessary in the interest of the securities market and keep compliance with the governing rules and regulations. The Committee recommend that a time-bound action plan may be chalked out and followed by SEBI to take punitive action against the Brokers and sub-Brokers who do not maintain the code of conduct given in SEBI's Regulations."

3.23 In their reply, the Ministry of Finance (Department of Economic Affairs) have informed as follows:—

"Schedule II prescribed under Regulation 7 of SEBI (Stock Brokers and sub-Brokers) Regulation, 1992 lays down the code of conduct for stock brokers and sub-brokers. A stock broker is required to abide by the Code of Conduct at all times as prescribed under Regulation 7 of the said regulations. Further Regulation 26(1) of the said regulations also provides that a penalty of suspension of registration of a stock broker may be imposed if the stock broker does not follow the code of conduct."

Thus continuous compliance with the provisions of SEBI Act, SC(R) Act, 1956 and rules and regulations made there under and rules, regulations and bye-laws of the stock exchanges is a *sine qua non* for stock brokers for holding certificate of registration granted by SEBI. In the event of any non-compliance thereof including the provisions contained in the Code of Conduct, punitive action as provided under Regulations is taken by SEBI on a continuous basis."

3.24 In para 1.43 of the Report, the Committee had noted as follows:—

"That in order to establish the identity of buyers and sellers of securities and facilitating market surveillance; a 'Client Code' has been made mandatory by SEBI at the broker's level in all stock exchanges. Further, SEBI has prescribed the policy of uniform 'Client-Code' *w.e.f.* 3rd September, 2001. The Committee desire that stock exchanges and SEBI should take effective measures to ensure the maintenance of the 'Client Code' by the brokers operating in all the stock exchanges. The Committee also recommend that the Brokers and sub-Brokers which do not comply with this 'Client Code' should be black listed from trading in capital market.''

3.25 The Ministry of Finance (Department of Economic Affairs) in their reply, have stated as follows:—

"SEBI, *vide* circular SMD/Policy/Cir-39 dated July 18, 2001 has stipulated that it will be mandatory for all brokers to use unique client codes for all clients. For this purpose, brokers shall collect and maintain in their back office the Permanent Account Number (PAN) allotted by Income Tax Department for all their clients. Sub-brokers will similarly maintain for their clients. Where an individual client does not have PAN number, such a client shall be required to give a declaration to that effect. In such an event, until the PAN number is allotted such client shall furnish passport number and place & date of issue. Where the client does not have a PAN number or a passport, such client shall furnish driving license number, place & date of issue. If none of the above are available, the client shall give his voter ID number. The above requirements shall be applicable for clients having order value of a lakh or more with effect from August 01, 2001.

Further following representations from various market participants about difficulties faced by them where all the four documents mentioned above are not available with the client, it has since been decided to allow ration card number coupled with the frequently used bank account number and the depository beneficiary account of the client as an identification document. In case this is used as client ID, the broker will also be required to obtain banker's certification for the bank account from his client and to ensure that the number provided by the client shall be of the most frequently used bank account and the depository account number for capital market transactions with him.

As regards the recommendations of the committee on black listing the members from trading in capital market, the stock exchanges have been advised *vide* letters dated October 25, November 28 and December 30, 2002

to de-activate the trading terminals of the members who have not complied with the above provisions of the unique client code with effect from January 01, 2003."

3.26 In para 1.44 of the Report, the Committee had noted with satisfaction the establishment of the Investor Education & Protection Fund on 1.10.2001. As on 31st March, 2001 the total corpus of the Investor Protection Fund had been to the tune of Rs. 222.5 crore. The Committee, however, desired that the Investor Education & Protection Fund should be strengthened so as to improve investor's awareness and initiate proper compensation to the investors whose monies have been locked-up in various fraudulent companies.

3.27 The Ministry of finance (Department of Economic Affairs) have informed in their reply, as follows:—

"Investor Education and Protection Fund has been set up under the provisions of section 205C of the Companies Act, 1956. Section 205C(3) reads as under:—

"the funds shall be utilized for the promotion of investors awareness and protection of the interest of investors in accordance with such rules as may be prescribed."

In accordance with these provisions, IEPF Rules have been prescribed. These rules do not provide for compensation to the investors. However, under these rules, following steps are being taken to guard the interest of investors by educating/improving awareness among them:—

(i) Advertising through Print Media (newspapers, magazines etc.) making investors aware about the Investors Complaints redressal system/ machinery;

(ii) Advertisement through electronic media by conducting monthly Panel Discussions on various topics on investors education and telecast of TV spots on various channels through Directorate of Audio & Visual Publicity (DAVP); and

(iii) Registration of various associations/organizations and providing financial assistance to them to conduct investor education and awareness programmes/seminars, research study, publication of magazines providing assistance to NGO's for bringing successful litigation against the defaulting companies etc."

3.28 In para 1.45 of the Report, the Committee had recommended as follows:—

"On the question of a separate Investor Protection Act, the Committee note that the Department of Company Affairs have felt no necessity for this piece of legislation. Instead of new Investor Protection Act, the Government have decided to amend the SEBI Act incorporating the points which may be proposed in the separate Investor Protection Act. The Committee, therefore, recommend that an appropriate amending legislation should be brought before

Parliament in the interest of the investors, expeditiously. The Committee hope that specific legal provisions would be made so as to ensure good management of the monies of the investors."

3.29 The Ministry of Finance (Department of Economic Affairs) in their reply, have stated as follows:—

"The SEBI (Amendment) Act, 2002 has enhanced the existing level of penalties prescribed for violation of the Act. Moreover, penalty for new violations has been included with a view to strengthen the existing mechanism to act as an effective deterrent to violation of the Act.

SEBI has mechanism to redress investors grievances. Courts can take cognizance of the offences under the Act only on a complaint of the Board. In addition to the efforts of SEBI, an Investor Grievances Redressal Cell is functioning in the Department of Economic Affairs. Moreover, the Department of Company Affairs and all the Stock Exchanges address investor grievances. Individual investors can be compensated upto the limits prescribed from the Investors Protection Fund set up under the bye-laws of the Stock Exchanges.

Further, SEBI Board has representation from RBI and the Government and is, therefore, independent enough to provide redressal of investors' complaints."

Observations/Recommendations of the Committee

3.30 The Committee had made recommendations for providing protection to the small investors/depositors particularly in the context of their exploitation by the financial Institutions. As detailed in the preceding paragraphs, the Ministry of Finance (Department of Economic Affairs) have informed the Committee that the Government have taken several measures in this direction. The important ones are as under:—

(i) Amendment of section 55A of the Companies Act, for strengthening the regulatory powers of SEBI.

(ii) Establishment of Investor Education and Protection Fund for creating awareness among investors.

(iii) Setting up of Serious Fraud Investigation Office (SFIO) w.e.f. 1.10.2003.

(iv) Vanishing Companies Cell is looking into issues relating to vanishing companies.

(v) Framing of guidelines by SEBI for financial companies for disclosure of informations at the time of public issue.

(vi) Fixing of time limit for looking into complaints, extension, arbitration etc.

(vii) Introduction of the Companies (Amendment) Bill, 2003 to deal with 'disgorgement of illegally desired benefits'. It seeks for penalty in case false information is placed before the National Company Law Tribunal. (which enjoys powers equal to High Court).

The proposed amendments in Company Law *inter-alia* also suggest to amend sections 13 and 30 of the Companies Act to provide that the Memorandum and Articles of Association of every company formed after the enactment of the Bill shall contain copies of recent photographs of all subscribers to the Memorandum and the witnesses alongwith proof of the identity of the subscribers.

(viii) Directions to stock exchanges to de-activate the trading terminals of the members who have not complied with the provisions of Unique Client Code with effect from January 10, 2003.

3.31 The Committee expect that the Government and all the regulatory bodies in financial sector would continue to be most vigilant to safeguard the interest of small investors. The Committee also recommend that the Government should take initiatives to initiate necessary amendments in the relevant Acts/regulations/ procedures etc. in a time bound manner.

NEW DELHI;
19 *May*, 2006
29 *Vaisakha*, 1928 (*Saka*)

PRABHUNATH SINGH,
Chairman,
Committee on Petitions.

MINUTES OF THE FIFTEENTH SITTING OF THE COMMITTEE ON PETITIONS (FOURTEENTH LOK SABHA)

The Committee on Petitions sat on Thursday, 31st March, 2005 from 1100 hrs. to 1240 hrs. in Committee Room No. 53, First Floor, Parliament House, New Delhi.

PRESENT

Shri Vijoy Krishna — *In the Chair*

MEMBERS

2. Shri Nandkumar Singh Chauhan
3. Dr. M. Jagannath
4. Smt. Nivedita Mane

SECRETARIAT

1. Shri Brahm Dutt — *Director*
2. Shri R. K. Bajaj — *Under Secretary*

WITNESSES

Representatives of the Ministry of Railways (Railway Board)

1. Shri R. K. Singh — *Chairman,* (*Railway Board*)
2. Shri R. R. Jaruhar — *Member Engineering,* (*Railway Board*)
3. Shri R. S. Varshneya — *Member Staff, (Railway Board)*
4. Shri R. Sundararajan — *Addl. Member (Work), (Railway Board)*
5. Shri S. C. Manchanda — *Adviser (Staff), (Railway Board)*
6. Shri P. K. Sanghi — *Exe. Director (Work) (Railway Board)*
7. Shri K. Biswal — *Exe. Director/Estt., (Railway Board)*
8. Shri M. N. Chopra — *Addl. Member/T&C, (Railway Board)*
9. Shri Ghan Shyam Singh — *Exe. Director/E&R, (Railway Board)*
10. Shri K. K. Sharma — *Joint Secretary (Parl.) (Railway Board)*
11. Shri Biplav Kumar — *Joint Director/R&C, (Railway Board)*

2. In the absence of the Chairman, the Committee chose, Shri Vijoy Krishna, to act as Chairman for the sitting under rule 258(3) of the Rules of Procedure and Conduct of Business in Lok Sabha.

3. Thereafter, the Chairman welcomed the representatives of the Ministry of Railways (Railway Board) and drew their attention to Direction 55(1) of the Directions by the Speaker regarding confidentiality of the proceedings.

4. Then, the Chairman and Members of the Committee sought clarifications on the representations requesting for (i) provision of jobs to the affected families whose lands have been acquired for Test Track by Eastern Railway, Mughal Sarai; (ii) release of funds for construction of new railway line between Maharajganj and Mashrak in Bihar; (iii) regularization of Canteen Manager and other employees working in Railway Staff Canteen in Varanasi; and (iv) appointment on compassionate grounds in Railways.

5. The following important points were discussed by the Committee:—

*** *** ***

(viii) the details about implementation of the Supreme Court orders by the Railways in regularization of Canteen Manager and staff of C&W Railway Staff Canteen in Varanasi;

(ix) the details about guidelines for the welfare of workers working in un-subsidized canteens at Railway establishments/stations; and

*** *** ***

6. The Committee directed the witnesses to sent written replies to some of the points on which replies were not readily available with them during the evidence.

7. A copy of the verbatim proceedings of the sitting of the Committee was kept on record.

The witnesses then withdrew.

The Committee then adjourned.

MINUTES OF THE TWENTY-SIXTH SITTING OF THE COMMITTEE ON PETITIONS (FOURTEENTH LOK SABHA)

The Committee on Petitions sat on Tuesday, 13th December, 2005 from 1700 hrs. to 1845 hrs. in Committee Room "E" Basement, Parliament House Annexe, New Delhi.

PRESENT

Shri Prabhunath Singh — *Chairman*

MEMBERS

2. Shri N.S.V. Chitthan
3. Dr. M. Jagannath
4. Shri Suresh Kurup
5. Smt. Nivedita Mane
6. Shri Dharmendra Pradhan
7. Shri Jyotiraditya Madhavrao Scindia
8. Shri Vijoy Krishna

SECRETARIAT

1. Shri A.K. Singh — *Director*
2. Shri U.B.S. Negi — *Under Secretary*
3. Shri M.S. Jaspal — *Assistant Director*

WITNESSES

Representatives of the Ministry of Coal

1. Shri Parkash Chandra Parakh — *Secretary, Ministry of Coal*
2. Shri Pradeep Kumar — *Addl. Secretary, Ministry of Coal*
3. Shri Mohd. Salamudin — *Director (Personnel)*
4. Shri Shashi Kumar — *CMD, Coal India Ltd.*
5. Shri Partho Bhattacharya — *CMD, Bharat Cooking Coal Ltd. (BCCL)*
6. Shri D. Chakraborthy — *CMD, Eastern Coalfields Ltd. (ECL)*
7. Shri A.K. Jyotish — Director, Ministry of Coal
8. Shri D.C. Garg — Director (Personnel), BCCL
9. Shri A. Sharma — CMD, MCL

2. At the outset, Chairman, welcomed the representatives of the Ministry to Coal and drew their attention to Director 55(1) of the Directions by the Speaker regarding confidentiality of the proceedings.

*** *** ***

5. The Committee thereafter took evidence of the representatives of the Ministry of Coal on the representation regarding proper implementation of SAIL terms and conditions of services by BCCL on the employees transferred from Washery Division of SAIL to BCCL.

6. During the discussion the Committee was infromed that the issue had been settle by the employees of BCCL and SAIL after the petition came before the Committee. As per the decision, the terms and conditions of SAIL will be applicable on such employees transferred from SAIL to BCCL. In pursuance thereof, the Chairman Directed that the petitioner as well as the CMD might be called to confirm the position in the matter so that the petition in this regard might be closed if both parties had agreed on the settlement.

7. The Chairman directed the Secretary to send written replies to the queries of the Members on which information was not readily available with them.

8. A copy of the verbatim proceedings of the sitting of the Committee was kept on record.

The witnesses then withdrew.

The Committee then adjourned.

MINUTES OF THE THIRTY-SEVENTH SITTING OF THE COMMITTEE ON PETITIONS (FOURTEENTH LOK SABHA)

The Committee on Petitions sat on Friday, 19th May, 2006 from 1000 hrs. to 1040 hrs. in Chairman's Room No. 45(II) Ground Floor, Parliament House , New Delhi.

PRESENT

Shri Prabhunath Singh — *Chairman*

MEMBERS

2. Shri N.S.V. Chitthan
3. Adv. Suresh Kurup
4. Smt. Nivedita Mane
5. Mohd. Muqueem
6. Shri Jyotiraditya Madhavrao Scindia
7. Shri Vijoy Krishna

SECRETARIAT

1. Shri P. Sreedharan — *Joint Secretary*
2. Shri A.K. Singh — *Director*
3. Shri U.B.S. Negi — *Under Secretary*

2. The Committee considered the draft Eleventh, Twelfth and Thirteenth Reports and adopted the same with minor modifications.

3. The Committee also authorised the Chairman to make consequential changes, if any, arising out of the factual verification of the Reports by the Ministries/Departments concerned and present the same to the House.

The Committee then adjourned.